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**DISTRICT COURT OF NEVADA**

**CLARK COUNTY**

GENE GRIEGO, individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

BECHTEL CORPORATION, a Nevada corporation;  
BECHTEL NEVADA, a Nevada corporation;  
BECHTEL SAIC COMPANY, L.L.C., a Delaware  
corporation; KIEWIT GROUP, a Delaware corporation;  
MORRISON-KNUDSEN, now known as WASHINGTON  
GROUP INTERNATIONAL, a Delaware corporation;  
PARSONS BRINCKERHOFF CONSTRUCTION  
SERVICES, INC., a Delaware corporation; PARSONS  
BRINCKERHOFF ENERGY SERVICES, INC., a  
Delaware corporation; PARSONS, BRINCKERHOFF,  
QUADE & DOUGLAS, INC., a New York corporation;  
TRW AUTOMOTIVE HOLDINGS, a Delaware  
corporation; TRW AUTOMOTIVE INTERMEDIATE  
HOLDINGS, a Delaware corporation; TRW  
ENVIRONMENTAL SAFETY SYSTEMS, INC., a  
Delaware corporation; TRW AUTOMOTIVE, INC., a  
Delaware corporation; DOES 1-100; and ROE  
CORPORATIONS 1-100,

Defendants.

CASE NO.:  
DEPT. NO.:

**A 481996**  
**IX**

**CLASS ACTION COMPLAINT**  
**{Arbitration Exemption**  
**Claimed: Class Action}**

Plaintiff GENE GRIEGO, individually and on behalf of all others similarly situated, brings this case to seek redress from the above-named defendants for their corrupt and fraudulent scheme deliberately to expose those working in and those visiting the tunnels dug at Yucca Mountain, Nevada, to dust so extraordinarily toxic that it amounts to a deadly time-bomb – increasing the risk of life-threatening diseases that manifest themselves up to 20 years or more after inhalation – and

1 for their corrupt and fraudulent scheme to conceal these egregious dangers from those workers and  
2 visitors, thereby intending them harm. Some, but not all, of the defendants' victims who worked in  
3 the Yucca tunnels were also employees of the defendants. For those victims, betrayed by their own  
4 employers, workers' compensation provides no exclusive remedy for the harms caused by  
5 defendants' malfeasance, which rises to the level of a deliberate intent to harm.

6 **NATURE OF THE CASE**

7 1. Defendants intentionally, deliberately, callously, and/or with willful and wanton  
8 disregard exposed workers and visitors to known, highly carcinogenic hazards inside miles of  
9 exploratory tunnels dug at Yucca Mountain, the site of a proposed deep geologic repository for the  
10 nation's high-level radioactive wastes. Moreover, defendants concocted a fraudulent scheme to  
11 deceive workers as to the nature of such hazards, and they fraudulently concealed from workers and  
12 visitors key data on actual workplace conditions that would have caused the workers to cease  
13 working, and would have caused the visitors not to enter the "Exploratory Studies Facility" (ESF).  
14 This fraudulent concealment continued for years until exposed early in 2004.

15 2. Yucca Mountain is intended to be the world's first and largest high-level waste  
16 repository, whose development is projected to cost at least \$58 billion. Scores of national and  
17 international scientists and dignitaries, including members of Congress and the Nevada Legislature,  
18 the Governor, and public interest groups ranging from environmentalists to the American  
19 Association of Retired Persons, have visited the project with its miles of exploratory tunnels winding  
20 deep into volcanic rock.

21 3. The federal Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101, does not permit  
22 construction to occur anywhere at Yucca Mountain until the Nuclear Regulatory Commission issues  
23 a construction permit, which has not occurred and will not occur for several years, if at all. Thus,  
24 as a matter of law, no construction has taken place at Yucca Mountain, even though tunneling,  
25 drilling, boring, and testing has occurred for the sole purpose of scientifically characterizing the  
26 rockform at the site.

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1           4.       As early as 1985 the defendants overseeing the Yucca Mountain Project (YMP), and  
2       the excavation of its tunnels, under contract or subcontract to the U.S. Department of Energy (DOE),  
3       knew or should have known that the mountain was laced and laden with silica, erionite, mordenite  
4       and other zeolites, and that their tunneling operations to drill boreholes and several miles of tunnels  
5       inside Yucca Mountain would, among other things, transform these minerals into fine, highly toxic  
6       dust that was easily inhaled and otherwise absorbed by workers and visitors, and (for those without  
7       protective clothing) tracked with them into their homes.

8           5.       Yet, for years defendants did next to nothing to protect the health and safety of the  
9       workers in and visitors to the ESF. Indeed, defendants devised and/or condoned practices to alter  
10      fraudulently data measuring particulate levels in the tunnels so as intentionally to trade workers' and  
11      visitors' health for their budgets and schedules. Consequently, defendants exposed workers in and  
12      visitors to the Yucca Mountain tunnels, without their knowledge or consent, to life-threatening toxic  
13      dusts known by defendants to cause diseases such as silicosis, lung cancer, mesothelioma, chronic  
14      obstructive pulmonary disease (COPD), renal disease, and tuberculosis. Defendants knew that the  
15      measured levels of toxic dusts inside the tunnels at Yucca Mountain exceeded applicable regulatory  
16      limits and required, at the very least, high-quality respiratory protection and protective clothing. Yet,  
17      defendants fraudulently concealed this information from workers and visitors, deliberately doctoring  
18      field readings of particulate levels in the Yucca tunnels so as to avoid the added costs, schedule  
19      impacts, and inconvenience of providing adequate respiratory protection for those workers and  
20      adequate respiratory protection and protective clothing for visitors, knowing that the actual  
21      particulate levels were certain to cause harm. The workers and visitors so impacted would have  
22      refused to enter, much less work in, the tunnels at Yucca Mountain without at least adequate  
23      respiratory protection and protective clothing had defendants disclosed the facts to them.

24          6.       Defendants have engaged in intentional, willful or wanton misconduct, in fraudulent  
25      concealment, and in abnormally dangerous activity for which they are strictly liable; defendants  
26      further have committed battery, acted with gross negligence, failed to warn, and intentionally and  
27      negligently inflicted emotional distress. Defendants' callous and venal behavior – so inhuman,  
28      inhumane, and horrific that it defies explanation – and their longstanding, fraudulent concealment

of that behavior, overwhelm and defeat the workers' compensation exclusivity bar, to the extent it may otherwise be applicable for some particular class members. These class members suffer and will or may suffer from disease due to this conduct and are entitled to tort compensation and punitive damages. Furthermore, permanent injunctive relief is necessary to ensure that defendants provide all workers in and visitors to the tunnels with adequate personal protection equipment at no cost to the workers or visitors and that they install, operate, and maintain efficient dust removal systems that reduce toxic dust levels to recognized acceptable minimum levels.

### PARTIES

#### 7. Plaintiffs:

GENE GRIEGO is an adult resident of Clark County, Nevada. He is employed by DOE's Los Alamos National Laboratories (LANL) and worked on site at the Yucca Mountain Exploratory Studies Facility (ESF or Site) from 1993 to August 2002 to perform site characterization and technical work. (The ESF constitutes an underground array of tunnels that were drilled into Yucca Mountain for the purpose of characterizing the geology, hydrology, and geochemistry of the Yucca Mountain site to assess its adequacy to isolate high-level radioactive wastes.) He was not involved in construction work. Mr. Griego was diagnosed with chronic obstructive pulmonary disease (COPD) on June 25, 2003. His latest breathing test returned with a 64% spirometry reading. Mr. Griego is a life-long non-smoker.

#### 8. Defendants:

a. Defendant BECHTEL CORPORATION (Bechtel), a Nevada corporation, is a contractor for DOE performing work on the ESF at the Yucca Mountain site. Bechtel Corporation is located at 2621 Losee Road, North Las Vegas, Nevada, 89030.

b. Defendant BECHTEL NEVADA CORPORATION (Bechtel NV), a Nevada corporation, is a contractor for the DOE performing work on the ESF at Yucca Mountain. It can be served at The Corporation Trust Company of Nevada, 6100 Neil Road, Suite 500, Reno, Nevada, 89511.

c. Defendant BECHTEL SAIC COMPANY, L.L.C. (Bechtel/SAIC), a Delaware corporation, is a contractor for the DOE performing as Management & Operator (M&O) of the ESF

1 at Yucca Mountain since at least November 2000. It is located at 1180 Town Center Drive, Las  
2 Vegas, Nevada 89144. On November 14, 2000, Bechtel/SAIC replaced TRW as DOE's lead M&O  
3 contractor at Yucca Mountain, responsible for safety, health, and regulatory compliance, as well as  
4 overall project management.

5 d. Defendants KIEWIT GROUP, Delaware corporations, were subcontractors  
6 for defendant TRW ENVIRONMENTAL SAFETY SYSTEMS, INC., at Yucca Mountain until  
7 October 1998, when tunneling and drilling was largely completed. KIEWIT GROUP includes  
8 Kiewit Construction Co., Kiewit Industrial Co., Kiewit Mining Group Inc., Kiewit Pacific Co., and  
9 Kiewit Western Co.. Each and all may be served at The Corporation Trust Company of Nevada,  
10 6100 Neil Road, Suite 500, Reno, Nevada, 89511. Kiewit worked with defendant TRW to drill the  
11 tunnels at Yucca Mountain.

12 e. Defendant MORRISON-KNUDSEN CORPORATION, now known as  
13 WASHINGTON GROUP INTERNATIONAL, a Delaware corporation, is a contractor for the DOE  
14 and was hired to perform design and engineering work for the ESF, and to oversee defendant Kiewit  
15 in the drilling and tunneling operations. MORRISON-KNUDSEN worked on-site until defendant  
16 BECHTEL/SAIC replaced defendant TRW (below) in November 2000 as the lead M&O for the  
17 YMP. MORRISON-KNUDSEN took over the drilling of test alcoves off the main tunnels when  
18 defendant Kiewit left the site in October 1998, when the majority of tunneling and drilling ended.

19 f. Defendant PARSONS BRINCKERHOFF CONSTRUCTION SERVICES,  
20 INC., and PARSONS BRINCKERHOFF ENERGY SERVICES, INC., are each Delaware  
21 corporations. PARSONS, BRINCKERHOFF, QUADE & DOUGLAS, INC., is a New York  
22 corporation. Collectively, PARSONS BRINCKERHOFF (PB) was a subcontractor for defendant  
23 Kiewit at Yucca Mountain, providing technical support as well as industrial hygiene services.  
24 Defendant PB remained on-site until defendant Kiewit left in October 1998. All defendants PB can  
25 be served at The Corporation Trust Company of Nevada, 6100 Neil Road, Suite 500, Reno, Nevada,  
26 89511.

27 g. Defendants TRW AUTOMOTIVE HOLDINGS, TRW AUTOMOTIVE  
28 INTERMEDIATE HOLDINGS, TRW ENVIRONMENTAL SAFETY SYSTEMS, INC., and TRW

1 AUTOMOTIVE INC. (a.k.a. TRW INC.) will be called collectively, TRW. TRW, a Delaware  
2 corporation (each and all), is a contractor for the DOE and performed work on the ESF at Yucca  
3 Mountain. TRW AUTOMOTIVE INC. wholly owns defendant TRW AUTOMOTIVE HOLDINGS  
4 and is the wholly-owned subsidiary of defendant TRW AUTOMOTIVE INTERMEDIATE  
5 HOLDINGS. TRW AUTOMOTIVE HOLDINGS is the holding company for numerous  
6 subsidiaries, including TRW ENVIRONMENTAL SAFETY SYSTEMS, INC.. Until it was  
7 replaced by Bechtel in November 2000, TRW ENVIRONMENTAL SAFETY SYSTEMS was  
8 responsible for safety, health, and regulatory compliance at the Yucca Mountain site, as well as  
9 overall project management. Each and all defendants TRW can be served at The Corporation Trust  
10 Company of Nevada, 6100 Neil Road, Suite 500, Reno, Nevada, 89511.

#### 11 JURISDICTION AND VENUE

12 9. This Court has jurisdiction because this case lacks diversity, all defendants were  
13 present in the state, and Plaintiff and some defendants are located in Clark County.

#### 14 FACTS

15 10. Yucca Mountain is located in a remote desert on federally-owned land near the secure  
16 boundaries of the Nevada Test Site in Nye County, Nevada. It is approximately 90 miles northwest  
17 of Las Vegas, Nevada.

18 11. The Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101, directed the U.S.  
19 Department of Energy (DOE) to study suitable sites for a geologic repository for civilian nuclear  
20 waste, that is, a disposal facility located deep underground. DOE did so through its Office of  
21 Civilian Radioactive Waste Management (OCRWM). In 1987, Congress amended the Act and  
22 directed DOE to study only one site: Yucca Mountain. Since then, hundreds of world-renowned  
23 scientists have conducted studies there. According to DOE, the mountain is one of the most  
24 thoroughly researched sites in the world, and DOE's contractors and subcontractors have expended  
25 several billions of dollars studying the geology, geophysics, and geochemistry of the site. With their  
26 ubiquitous access to such studies, defendants possessed and possess a substantial understanding of  
27 the physical characteristics of the Yucca Mountain volcanic rock laced with silica, erionite, and  
28 mordenite.

12. The design of this waste repository, if it is licensed for full construction, eventually will include approximately 150 miles of tunnels located 1000 feet beneath the surface of the mountain, varying in diameter from 16 to 25 feet. The initial process for developing the repository included a "site characterization" project to evaluate the physical characteristics of the Yucca Mountain rock and determine its suitability as a high-level radioactive waste dump. The site characterization itself required boring into the mountain to assess scientifically the ability of Yucca Mountain to isolate nuclear waste, followed by the drilling of several miles of tunnels into Yucca Mountain in what came to be known as the ESF. Portions of the ESF tunnels are 25 feet in diameter. Digging the ESF with unique boring equipment specially designed for the site characterization work at Yucca Mountain constituted one of the largest tunneling operations in the world.

13. Before initial boring and tunneling for the ESF began, defendants conducting the boring and tunneling knew or should have known that carcinogenic compounds which would create inhalable dust existed at the site at drilling depth. As early as 1985 preliminary drilling work revealed the fibrous mineral erionite, a zeolite well-known to be highly carcinogenic, which is similar in composition and behavior to asbestos and is easily capable of becoming airborne as fibrous dust during tunneling operations. The Los Alamos National Laboratory (LANL) documented and reported their findings to TRW and DOE concerning the toxic properties of the erionite dust that tunnel boring would create at Yucca almost five years before that tunneling actually began. According to John Arthur, DOE's current Deputy Director for OCRWM, Office of Repository Development, DOE was well aware of this danger in 1992, two years before tunneling began. Moreover, Dr. Jacob Paz, a former federal OSHA industrial hygienist who was a contractor at Yucca Mountain, warned DOE officials about the hazards from erionite in the early 1990s before tunneling began. In 1993 workers hit a huge vein of erionite in test bore-hole UZ-14. Also present at repository depth were mordenite and crystalline silica polymorphs (Cristobalite, Trydimite, and Quartz), known carcinogens, which also would be converted into toxic dust by the Yucca tunneling operations and would poison the air that workers and visitors would breathe. Tunneling at Yucca was also known to release substantial quantities of radon, a radioactive gas produced by the decay

1 of naturally occurring uranium and radium deposits in the rock. Further, defendants knew or should  
2 have known that heavy diesel fumes from the trains used to remove materials from the tunnels cause  
3 other respiratory diseases.

4 14. Initial drilling of the ESF, using dry-drilling, began in October-November 1994.  
5 Although water would have helped calm the dust and reduce exposure to the workers and visitors,  
6 scientists working for defendants feared that this standard industrial practice would interfere with  
7 experiments testing how fluids traveled through the volcanic rock. Thus, the defendants drilling the  
8 tunnels opted not to use water or to take alternate precautions to minimize dust.

9 15. LANL was the laboratory on the project that interfaced with those contractors doing  
10 the actual digging – defendants Kiewit, Morrison-Knudsen, and TRW – so as to perform site  
11 characterization, laboratory, and scientific work, not construction work, to determine if the mountain  
12 is suitable for radioactive waste disposal. In December 1992, before initial tunneling began, Ron  
13 Oliver, a LANL Deputy Group Leader, issued a report on Dry Drilling (LA-12411-SR) that informed  
14 the contractors that there was up to 70% silica in the rock matrix and listed several protective  
15 measures that they should implement. The contractors ignored this advice. In mid-1994, again  
16 before initial tunneling began, Ned Elkins, then Deputy Group Leader for the LANL Test  
17 Coordination Office, led a meeting on determining the preferred site access, during which the group  
18 considered a large number of Los Alamos technical reports. Among those reports was Report LA-  
19 10802-MS showing high silica concentrations at the Yucca site inside the ESF. Inhaled silica dust  
20 can lead to incurable silicosis, lung cancer, COPD, autoimmune disorders, increased risk of  
21 tuberculosis, and chronic renal disease, among other problems. LANL again informed the tunnel  
22 contractors that Yucca Mountain contains approximately 70% silica rock by weight and would pose  
23 a dangerous environment to workers and visitors. The defendant group briefed by Ned Elkins  
24 disregarded those facts and concluded that the need to meet looming deadlines would determine the  
25 preferred personnel access requirements to the site from which the site characterization would begin.

26 16. In 1994, DOE published and released to its Yucca contractors LANL's study of the  
27 "Distribution of Potentially Hazardous Phases in the Subsurface at Yucca Mountain, Nevada."  
28 Among other findings, the report documented that:



- a. Erionite is present in the rock matrix at Yucca Mountain at levels of up to 35 percent by weight of the rock being excavated;
- b. Erionite is known to be carcinogenic in humans, and epidemiological data suggests that exposure to erionite-bearing dusts increases the risk of mesothelioma in humans, even at much lower exposure levels than required for any of the asbestos minerals;
- c. Erionite is ranked by the International Agency for Research on Cancer, a part of the World Health Organization, in the highest-known category of carcinogenic potential for humans, and its causal relationship to cancer has been positively established;
- d. Studies since 1985 show that erionite is "extremely active" biologically and can induce mesotheliomas at exposures of one to two orders of magnitude lower than U.S. regulatory limits for occupational exposure to asbestos;
- e. Epidemiological studies in Turkey have revealed that respiratory mesotheliomas occurred even from non-occupational exposures to erionite;
- f. One study (Wagner, 1985) concluded that "No other dusts we have investigated have produced this high incidence of tumors particularly following inhalation";
- g. Other dusts present at the Yucca Mountain drilling site are "probably carcinogenic to humans," including Quartz, Cristobalite, several other crystalline varieties of silica, and Trydimite.

17. The Los Alamos study concluded that established and probable human carcinogens "are ubiquitous at Yucca Mountain, and therefore, when drilling the ESF at Yucca Mountain, a thorough knowledge of the airborne particulates generated through such activities is crucial to worker and environmental safety." Finally, it concluded that although most risks can be minimized by use of "safe, modern mining practices," erionite may pose a special risk if encountered in sufficient quantity even when standard modern tunneling practices are followed, due to "its extremely high carcinogenic potential."

18. But the defendants who undertook to drill the ESF deliberately ignored these warnings. For almost two years after tunneling of the gargantuan ESF began in one of the world's largest and most complex tunneling operations, there was little or no respiratory protection in use, and clouds of toxic dust visibly choked the tunnels at the project. Defendant TRW, the OCRWM M&O Contractor, was initially responsible for the environment, health and safety of all contractors and their employees on site, and for compliance with applicable DOE safety, health, and occupational requirements reflected in, among other things, DOE's Order 440.1A. Among other things, Order 440.1A requires DOE contractors to provide a workplace environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees"; permits workers to decline to work in the face of known hazards; requires that workers be made aware of workplace hazards and notified of overexposure; mandates use of respiratory protection when specified airborne hazards exist; and requires use of protective measures to keep workplace exposures below acceptable levels.

19. Dr. Jacob Paz, a former OSHA asbestos/erionite inspector, indicates that workers need adequate respiratory equipment and protective clothing to help shield them from the carcinogenic hazards of the toxic dusts and gases of Yucca Mountain. Moreover, he notes that clothing exposed to these toxic dusts must be discarded, not brought home and washed. This requirement is due to the fact that the minute, toxic fibers that comprise these dusts easily become lodged on the clothing or bodies of workers in and visitors to the YMP, and so are easily transported to workers' and visitors' homes where they can expose families and loved ones to harm. Although defendants provided some workers with protective clothing, defendants did not do so for any visitors, and they fraudulently concealed these facts from both workers and visitors until 2004.

20. In February 1996, C.W. Parker with TRW sent an interoffice correspondence to R.M. Sandifer, a DOE manager, regarding the air quality in the tunnel. The correspondence indicated that tunnel mappers who worked behind the tunnel digging machines had been overexposed to silica despite installation of a booster fan and a vent system that had been maintained as late as January 1996. The correspondence further acknowledged the carcinogenic nature of free silica. The correspondence recommended that the tunnel subcontractors, defendants Kiewit and Parsons

1 Brinckerhoff (Kiewit/PB), increase dust monitoring immediately, eliminate as much as possible the  
2 ever-present silica-laden dust that permeated everything, repair ducts and leaking vent lines, and  
3 modify the fans in order to reduce worker exposure. Parker copied the document to the M&O team  
4 members who had workers in the hole: R.W. Craig and R. McDonald with Mercury, L.E. Minnick,  
5 and W.D. Wightman with Kiewit/PB.

6 21. Not only did defendants ignore these warnings, defendants intentionally and  
7 fraudulently concealed the truth about the hazards at Yucca Mountain. In the spring of 1995, Mike  
8 Taylor, an industrial hygienist from Los Alamos, briefed defendants Kiewit, Morrison-Knudsen  
9 (including manager Ralph Kresler), as well as DOE officials Wendy Dixon, Richard Craun, and  
10 others, as to the severity of the occupational hazards present in the drilling and tunneling operations.  
11 Robert Law, a Morrison-Knudsen manager, cut short Mr. Taylor's presentation, taking him out of  
12 the room and threatening to run him off the project if he did not suppress his findings.

13 22. During tunnel excavation work in the spring and summer of 1996, Judy Kallas, an  
14 experienced, industrial hygienist hired by defendant Kiewit, took field measurements of silica  
15 particulate levels in the tunnels to determine whether they were within applicable limits and whether  
16 respiratory protection was required for tunnel workers. Her measurements, recorded in field notes,  
17 showed that silica safety levels were being exceeded and that respiratory protection was mandatory.  
18 Kallas reported that dust levels were so high that she would have to wipe her glasses off when  
19 emerging from the tunnel just to be able to see. Yet, her supervisor, Barry C. McNeill, working for  
20 defendant Kiewit, ordered her to "change her field notes about the dust levels in the tunnel" so that  
21 defendants TRW and Kiewit could avoid providing workers and visitors with respiratory protection.  
22 From April through August, 1996, Kallas' field notes were doctored by McNeill or his supervisors,  
23 or by Kallas at the direction of McNeill or his supervisors, on nearly a daily basis. The corrupt  
24 scheme being implemented by McNeill and his Kiewit supervisors involved presenting air samples  
25 for laboratory analysis, but fraudulently doctoring the recorded sampling times so as to yield a  
26 fictional lower concentration of particulates than was actually present in the tunnel environment.  
27 In this fraudulent manner, defendants were able to avoid DOE and standard industrial requirements  
28 for respiratory protection for workers and visitors and save on applicable labor costs.

23. Kallas at first reluctantly participated in defendants' corrupt scheme on threat of losing her job. She complained about the doctored field data to senior management at Kiewit, including Lance de Stwolinski and others, but was told that she would be fired if she did not obey her supervisors. During Kallas' tenure, defendants had just begun providing some workers with respiratory protection, but this protection was knowingly substandard for the hazards presented, resembling surgical masks with a feeble rubber seal instead of HEPA-type filters or equivalent protection that is customary and mandatory for environments containing silica, erionite, or asbestos. Kallas reported that the rubber seals on the substandard masks would frequently be broken in as little as 20 minutes in the hot, sweaty tunnels.

24. Kallas was fired on August 9, 1996, for her complaints and unwillingness to be co-opted into defendants' malfeasance.

25. In June 1996 DOE shut down operations to implement a rudimentary respiratory program consisting of half-face and full-face dual cartridge respirators, improved ventilation, and a "clean" room supposedly free from dust in which employees could eat. Prior to the creation of a "clean" room, workers ate at their work stations and had no washing facilities. These changes, in any event, were too few, too late. By then the tunnel was already two and a half miles long. For two years people had been exposed wantonly everyday to airborne free silica, erionite, and other zeolites in the tunnel without any respiratory protection whatsoever, without their knowledge of the presence of such inherently dangerous compounds, and unaware that field readings of particulate levels were being doctored routinely to justify the absence of any protection or the application of substandard protection.

26. In short, defendants placed a higher priority on the site characterization deadlines than they did on human safety and health, deliberately deceiving their workforce about the hazards so as to impose harm upon workers and visitors to save time and money. Wes Myers was an environmental safety official with TRW at YMP during the initial tunneling. He described the conditions during tunnel boring in a 2003 memo that he wrote for the director of Las Alamos National Laboratory, noting that the tunnels were very dusty, workers received only paper painters' masks if operations became too dusty, and scientists warned supervisors of the possibility of

1 respiratory health issues from workers' inhalation of the toxic dusts. TRW health officials had  
2 ignored the warnings, responding untruthfully that workers would need exposure to the dusts for 30  
3 years or more to be at risk for silicosis. In 1995, the Inspector General of DOE, John C. Layton,  
4 issued to the DOE Secretary a memorandum entitled, "Audit of Management of the Site  
5 Characterization Program at Yucca Mountain," Report DOE/IG-0366. The Audit made very clear  
6 that the Yucca program was years behind schedule and as a whole lacked sufficient funding, that  
7 DOE was pushing its contractors to complete the project despite the lack of funding in order to meet  
8 statutory deadlines, and that the recognized lack of health and safety measures that would reduce or  
9 prevent worker exposure to silica dust was due to local cost cutting measures. In short, the project,  
10 woefully behind schedule, had been proceeding at the deliberate cost of human health.

11 27. The defendants at Yucca Mountain had in place no formal safety and health  
12 requirements management process, and nothing that systematically correlated safety and health  
13 requirements with existing procedures and DOE orders. In May 1999, the DOE Office of  
14 Environment, Safety, and Health published its Focused Review of the Yucca Mountain Project  
15 Overview, Publication EH2PUB/05-99/03SH. It indicated that:

- 16 a. as of 1999, the YMP had more than 1600 overall employees, including 90  
17 DOE employees at the Yucca Mountain Site Characterization Office  
18 (YMSCO) who provided direction and oversight for project activities.  
19 Approximately 300 YMP employees were located at the site at that general  
20 time;
- 21 b. as of 1999, the YMSCO was supported by personnel from defendant TRW  
22 Environmental Safety Systems, the M&O contractor; Booz Allen, a  
23 management technical services contractor; and others;
- 24 c. as of 1999 – five years after drilling began – an integrated safety plan was just  
25 beginning to take form. TRW, as M&O, had failed its duty to protect the  
26 safety and health of site personnel, the general public, and the environment  
27  
28

- by not implementing the safety program regarding airborne silica and erionite dusts or a personnel training process regarding those hazards;
- d. the overall requirements for hazard analysis were available to M&Os through the DOE YMP Safety and Health Plan and from the Office of Environment, Safety, and Health itself;
  - e. in 1998 TRW took over [tunnel] M&O duties from Kiewit/PB. The transition provided a perfect opportunity for TRW to implement an integrated hazard analysis process that did not exist prior, even though the overall requirements were readily available. Although initiated, the TRW integrated process was tremendously deficient;
  - f. TRW provided no roadmap for hazard analysis or the link of hazards to work activities; and
  - g. TRW's work instructions (WIs) – the communication between management and labor – did not include any safety and health requirements, input from safety and health professionals, or hazard analysis considerations. Specifically, even though Job Safety Analysis (JSA) No. 38, "Core Drilling, Underground," stated that workers should wear appropriate personal protection equipment, the WIs indicated no specific equipment. Job-specific controls for respiratory protection, developed by the foreman, were not documented in the JSA. Critically, neither the radon hazard nor tunnel respiratory protection and evacuation criteria were identified in the JSA. Yet, the management was required to read the Environment, Safety, and Health Office's review that included sufficient descriptions for personal protection equipment.

28. By November 2000, DOE replaced TRW as the lead M&O of the Yucca project with Bechtel/SAIC. Bechtel had been operating at the site for years through its Bechtel Nevada subsidiary. Bechtel/SAIC signed a formal contract with DOE on November 14, 2000, assuming many of the personnel from the previous M&O, and failing to disclose the numerous safety and

1 health infractions and fraudulent particulate readings that such assumed individuals knew had  
2 occurred in the tunnels, thereby continuing the fraud upon workers and visitors that they had not  
3 been exposed to unreasonable harms, when, in fact, their exposure to toxic dusts was, and would  
4 continue to be, a serious health issue.

5 29. Defendants did not inform the workers and visitors of the hazards until January 2004,  
6 despite defendants' pervasive knowledge that toxic dust levels in the Yucca tunnels exceeded levels  
7 that triggered regulatory requirements for various measures to protect human health. Defendants  
8 concealed that information from workers and visitors intentionally and, indeed, deliberately  
9 misrepresented it in doctored field readings. The workers and visitors relied on defendants'  
10 fraudulent misrepresentation that it was safe to enter the tunnels of Yucca Mountain. On January  
11 16, 2004, John Arthur, DOE's Deputy Director for OCRWM, Office of Repository Development,  
12 issued to OCRWM's East and West divisions a "Weekly Message" discussing a formal notice to be  
13 published in the DOE *News* and which was circulated by email to OCRWM East and West on  
14 January 15, 2004. In the notice Arthur and John Mitchell, General Manager of defendant  
15 Bechtel/SAIC, affirmed that there had been little respiratory protection available at the Site and  
16 estimated that 1200-1500 people potentially had been exposed to airborne free silica in the tunnel.  
17 They stated in the Weekly Message that the notice had been sent to "many former YMP workers,  
18 former contractor organizations, Nevada Test Site employees, the media, external interested parties,  
19 and local, state, and national elected officials." Mr. Arthur added further that the program  
20 comprehended exposure from both silica and erionite. He quoted Dr. Margaret S.Y. Chu, Director  
21 of OCRWM, as saying that a new and expensive silicosis screening program was "the right thing to  
22 do," that measures now in place at the Site were "protecting current workers."

23 30. These efforts, however, were likewise too little too late. Federal government officials  
24 now admit that individuals with as little as two hours exposure to the environment of the ESF may  
25 merit monitoring – and for good reason: the dust at the YMP is so toxic that it amounts to a deadly  
26 time bomb; exposure increases the risk of latent and potentially fatal disease that will manifest itself  
27 up to 20 years or more after inhalation. The International Agency for Research on Cancer has  
28 declared silica to be a known carcinogen. Human studies indicate that exposure to silica for even

short periods causes autoimmune diseases, COPD, and silicosis. Silicosis is a progressive disease for which there is no cure, and, once contracted, its progression does not stop with a reduction or elimination of future exposure to silica. Advanced or complicated silicosis changes the lungs' normal elasticity into scar tissue which prevents normal inhalation and exhalation. Those afflicted are doomed to death by prolonged suffocation. Erionite, a known carcinogen linked to fibrosis and to mesothelioma, is more dangerous than silica and is also fatal. Fiber-for-fiber, erionite is up to a hundred times more aggressive than asbestos; only slight exposure to erionite greatly increases the likelihood of developing mesothelioma. Mordenite, now also known to be pervasively present in the tunnel dust, likewise is believed to be a carcinogen. Radon exposure in significant quantities is strongly linked to lung cancer, also potentially fatal. And diesel exhaust fumes have been linked to a variety of cancers and respiratory problems.

#### **CLASS ACTION ALLEGATIONS**

31. Plaintiff brings this action pursuant to N.R.C.P. 23.

32. Plaintiff brings this action on his own individual behalf and on behalf of all other persons who worked at or visited the tunnels at YMP since 1992. Subject to later expansion, the following classes are represented here:

##### **Class I:**

All persons (excluding defendants, their officers, directors, agents, parents, subsidiaries, and affiliates) who worked in the tunnels at Yucca Mountain or who were involved in boring, drilling, and/or tunneling operations there at any time from 1992 to 2003, but who were not employed by any of the named defendants. These persons are suing the named defendants.

##### **Class II:**

All persons (excluding defendants, their officers, directors, agents, parents, subsidiaries, and affiliates) who worked in the tunnels at Yucca Mountain or who were involved in boring, drilling, and/or tunneling operations there at any time during the period 1992 through November 14, 2000, and who were



1 employed by the named defendants during that time. These persons are suing  
2 those named defendants, including their respective employers.

3 **Class III:**

4 All persons (excluding defendants, their officers, directors, agents, parents,  
5 subsidiaries, and affiliates) who worked in the tunnels at Yucca Mountain  
6 after November 14, 2000, or who were involved in boring, drilling, and/or  
7 tunneling operations there at any time during the period November 14, 2000,  
8 through December 31, 2003. Those persons are suing the named defendants  
9 other than Bechtel Corporation and Bechtel SAIC Company.

10 **Class IV:**

11 All persons (excluding defendants, their officers, directors, agents, parents,  
12 subsidiaries, and affiliates) who visited the tunnels at Yucca Mountain for  
13 more than two hours during the period 1992 through 2003. These persons are  
14 suing the named defendants.

15 33. The Plaintiff Classes are so numerous that joinder of each member would be  
16 impracticable. DOE estimates that at least 1200-1500 workers were exposed significantly to silica  
17 and erionite dusts at the Site. Visitors likely rank in the thousands. Further, defendants likely  
18 possess records of workers and visitors from which to ascertain the Classes. Disposition of their  
19 claims in this one case would save time and money, a benefit to all parties and to the Court.

20 34. Many questions of law or fact are common to and affect the Class as a whole,  
21 including but not limited to whether:

- 22 a. Defendants knew or should have known that the YMP ESF contained  
23 carcinogenic materials such as silica and erionite that would create inhalable  
24 toxic dusts when mined;
- 25 b. Defendants knew or should have known that exposure to the toxic dusts  
26 could lead to latent diseases such as silicosis, lung cancer, COPD, and increased  
27 risk of pulmonary tuberculosis;

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- c. Defendants chose to make meeting deadlines a higher priority than protecting the safety and health of YMP ESF workers and visitors;
- d. Defendants provided little or no personal protection equipment to workers and visitors from 1992 to 2003, and what little personal protection equipment defendants did provide to workers and visitors was inadequate to prevent exposure to the toxic dusts at the site;
- e. Defendants knew or should have known that from 1992 to 2003 the respiratory ventilation system in the tunnels at the site was insufficient to remove the airborne toxic dusts from the air, much less to protect on-site workers and visitors from exposure to those dusts;
- f. Defendants' conduct caused injury to Plaintiff and the Class members, and Plaintiff and the Class are entitled to relief;
- g. Defendants' conduct, and their fraudulent scheme to deceive workers as to known hazards, so far exceeded and so far exceeds the bounds of human decency as to amount to intentional harm;
- h. Defendants' fraudulent concealment of their abhorrent behavior overwhelms and defeats the workers' compensation exclusivity bar; and
- i. Defendants' conduct was willful, wanton, and/or intentional, entitling Plaintiff and the Class to exemplary relief.

35. Plaintiff Griego suffers injuries typical to those of all four Classes. Plaintiff Griego and the members of all four Classes bring their claims under the same legal and remedial theories, pursuant to Nevada common law. Consequently, Plaintiff Griego's interests are coincident with, and not antagonistic to, those of the members of all four Classes. Plaintiff Griego has retained counsel who, collectively, are experienced in the science of Yucca Mountain, the injuries due to exposures to substances such as silica, and complex and class action litigation. Counsel have dedicated their resources to this case.

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1           36.     The questions of law and fact which are common to the claims of Plaintiffs and Class  
2 members predominate over questions, if any, that may affect only individual Class members because,  
3 among other reasons, Defendants have acted on grounds generally applicable to all Class members.

4           37.     This class action would preclude the potential for inconsistent or contradictory  
5 individual judgments that would dispose of or impair the interests of other prospective class  
6 members not parties to individual litigation. This class action would establish compatible and  
7 consistent standards of conduct for Defendants.

8           38.     Defendants have acted or, specifically here, refused to act on grounds generally  
9 applicable to all Class members as a whole where it knew of the dangers, intentionally exposed all  
10 Class members to them, and deprived all Class members of meaningful protection from them.

11           39.     Class action treatment is the superior (if not the only) method for the fair and efficient  
12 adjudication of this controversy where common questions of law and fact predominate over  
13 individual ones. Among other reasons, class treatment will permit a large number of similarly  
14 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
15 without the unnecessary duplication of evidence, effort, and expense that numerous individual  
16 actions would engender. Individual litigation would congest the Nevada judicial system for years.  
17 The benefits of proceeding by means of class action, including providing injured persons or entities  
18 with a method for obtaining redress on claims that it might not be practicable or possible to pursue  
19 individually, substantially outweigh the difficulties, if any, which may arise in the management of  
20 this case as a class action.

## 21                                   CAUSES OF ACTION

### 22                                   Count I

23                                   (Willful or Wanton Misconduct)

24           40.     Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-39,  
25 as though fully set forth here.

26           41.     Defendants had actual and/or constructive knowledge of the dangers of the toxic dusts  
27 and gases to which the workers in and visitors to the tunnels of the YMP were exposed.

28           ///

43. Defendants fraudulently and intentionally set about to deceive workers and visitors by fabricating hazard levels with the knowledge that the true levels were certain to cause harm, or concealing such fraud from workers and visitors.

**Count II**  
(Battery)

45. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-44, as though fully set forth here.

46. Defendants had actual and/or constructive knowledge of the dangers of the toxic dust and gas to which the workers in and visitors to the tunnels of the YMP were exposed.

47. Defendants had actual and/or constructive knowledge of the probable consequences to the health of the workers in and visitors to the tunnels of the YMP of failing to take measures to prevent such exposure.

48. The contact of the workers in and the visitors to the tunnels of the YMP with this highly toxic dusts and gases was unwanted, harmful, and offensive to them.

49. Defendants were key participants in, and were responsible for, the tunneling operations that produced the highly toxic dusts and gases to which the workers in and visitors to the tunnels of the YMP were exposed, and for the fraudulent concealment of actual tunnel conditions from workers and visitors.

50. By warning the workers in and visitors to the tunnels of the YMP of the dangers of the highly toxic dusts and gases in those tunnels, by providing them with effective respiratory equipment, and by taking other measures, defendants could have prevented the unwanted, harmful, and offensive contact with the dusts and gases suffered by those individuals.

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**Count IV**  
(Failure to Warn)

61. Defendants had actual and/or constructive knowledge of the dangers of the toxic dusts and gases to which the workers in and visitors to the tunnels of the YMP were exposed when they failed to provide effective respiratory equipment and/or other measures to those individuals.

63. There was a special relationship between visitors to the tunnels of the YMP and defendants because those tunnels are not accessible by the general public and those visitors were the guests of defendants or allowed to visit the tunnels only by the permission of defendants.

65. Defendants breached that duty to warn, and they took systematic measures to deceive fraudulently workers in and visitors to the tunnels about the hazards they were exposed to while in the tunnels.

66. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-65, as though fully set forth here.

22

67. Defendants had a duty of care to provide to the workers in and visitors to the tunnels of the YMP with effective respiratory equipment and/or other measures to protect these individuals from the highly toxic dusts and gases in those tunnels.

68. Defendants heedlessly breached that duty – manifesting not even slight diligence or taking even scant care – by failing to provide the workers in and visitors to the tunnels of the YMP with effective respiratory equipment and/or other measures to protect those individuals from exposure to the highly toxic dusts and gases in those tunnels, and by fraudulently deceiving workers and visitors as to the known hazards, thereby creating an unreasonable risk of harm to those individuals and a high probability that substantial harm would result.

69. The diseases suffered by the class members would not have occurred but for the defendants' breach of their duty of care.

70. The diseases suffered by the class members were the foreseeable consequences of defendants' failure to provide the workers in and visitors to the tunnels of the YMP with effective respiratory equipment and/or other measures to protect those individuals from exposure to the highly toxic dusts and gases in those tunnels.

**Count VI**  
(Fraudulent Concealment)

71. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-70, as though fully set forth here.

72. Defendants had actual and/or constructive knowledge of the dangers of the toxic dusts and gases to which the workers in and visitors to the tunnels of the YMP were exposed.

73. The workers in and visitors to the tunnels of the YMP were unaware of the dangers of the toxic dusts and gases to which they were exposed, and could not by reasonable diligence become aware of those dangers.

74. Due to defendants' (a) superior access to information and data concerning the conditions and potential dangers in the tunnels of the YMP, (b) control over and responsibility for the tunnels of the YMP, and (c) positions as the hosts of the visitors to the tunnels of the YMP, among other reasons, those workers and visitors imposed their confidence in and relied on

1 defendants to prevent them from being exposed to toxic dusts and gases and to otherwise keep them  
2 safe in the tunnels of the YMP.

3 75. Defendants knew that the workers in and visitors to the tunnels of the YMP were  
4 unaware of the dangers of the toxic dusts and gases to which they were exposed.

5 76. Defendants had a duty to disclose to the workers in and visitors to the tunnels of the  
6 YMP the dangers of the toxic dusts and gases to which they would be exposed in those tunnels.

7 77. Defendants instead actively misled the workers in and visitors to the tunnels of the  
8 YMP by changing field notes, data, and other reports; by suppressing scientific findings; by failing  
9 to provide effective respirator equipment or taking other safety measures; and/or by otherwise  
10 concealing facts that would reveal the dangers of the toxic dusts and gases to which they were  
11 exposed.

12 **Count VII**  
13 **(Outrage)**

14 78. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-77,  
15 as though fully set forth here.

16 79. Defendants had actual and/or constructive knowledge of the risk that workers in and  
17 visitors to the tunnels of the YMP would contract cancer or other equally serious diseases as a result  
18 of their exposure to the toxic dusts and gases in those tunnels, and fraudulently concealed this  
19 knowledge from workers and visitors with the intent to deceive them.

20 80. In these circumstances, the failure of defendants to provide workers in and visitors  
21 to the tunnels of the YMP with effective respiratory equipment and to take other measures that would  
22 prevent the exposure of those workers and visitors to toxic dusts and gases was extreme and  
23 outrageous conduct.

24 81. Defendants engaged in this extreme and outrageous conduct with reckless disregard  
25 for the emotional distress workers in and visitors to the tunnels of the YMP would suffer as a result  
26 of becoming aware that they had been exposed to toxic dusts and gases from which they have  
27 contracted a horrible, fatal disease.

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82. As a result of becoming aware of this risk, and of their deliberate exposure to these serious hazards as part of defendants' corrupt scheme, workers in and visitors to the tunnels of the YMP have suffered and will continue to suffer severe emotional distress.

**Count VIII**  
(Negligent Infliction of Emotional Distress)

83. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1-82, as though fully set forth here.

84. As set out in Count II above, defendants subjected workers in and visitors to the tunnels of the YMP to unwanted, harmful, and offensive contact with toxic dusts and gases in those tunnels.

85. As a result of this contact with toxic dusts and gases, workers in and visitors to the tunnels of the YMP have contracted a horrible, fatal disease.

86. As a result of becoming aware of their disease, or the unreasonably increased significant risk thereof, workers in and visitors to the tunnels of the YMP have suffered and will continue to suffer serious emotional distress.

87. Defendants had a duty not to inflict such serious emotional distress on these workers and visitors.

88. Defendants negligently inflicted this serious emotional distress on these workers and visitors.

**PRAYER**

WHEREFORE, Plaintiff prays, individually and on behalf of all others similarly situated, that the Court will enter judgment as follows:

1. Declare and certify this action as a proper class action under Nev. R. Civ. P. 23(b)(3), and Plaintiff as the proper class representative;

2. Find, adjudge, and decree that defendants' conduct has endangered the lives of all who worked in or visited YMP ESF from 1992-2003;

3. Find, adjudge, and decree that defendants' conduct was unlawful;

4. Find, adjudge, and decree that defendants are strictly liable for this unlawful conduct;

1           5.       Find, adjudge, and decree that defendants' conduct was so egregious as to amount to  
2 intentional misconduct;

3           6.       Find, adjudge, and decree that Plaintiffs are entitled to tort damages because  
4 defendants' egregious and unlawful conduct overwhelms and defeats the exclusivity bar of workers'  
5 compensation;

6           7.       Order permanent injunctive relief that requires that defendants provide all workers  
7 in and visitors to the tunnels with adequate personal protection equipment at no cost to the workers  
8 or visitors and install, operate, and maintain efficient dust removal systems that reduce toxic dust  
9 levels to recognized acceptable minimum levels;

10          8.       Find, adjudge, and decree that Plaintiffs and the Classes are entitled to past and future  
11 damages, as proven at trial, from defendants jointly and severally;

12          9.       Find, adjudge, and decree that Plaintiffs and the Classes are entitled to reasonable  
13 costs of suit, attorneys' fees, and pre- and post-judgment interest;

14          10.      Find, adjudge, and decree that Plaintiffs and the Classes are entitled to exemplary  
15 damages; and

16          11.      Award such other and further relief as this Court may deem necessary, proper, and/or  
17 appropriate.

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**JURY DEMAND**

Plaintiff demands a trial by jury for all issues so triable.

DATED this 11<sup>th</sup> day March, 2004

Respectfully submitted,

  
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